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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **BAIL APPLN. 614/2023**

SOUBHAGYA @ RAHUL

..... Petitioner

Through: **Mr. Hemant Shah, Advocate.**

versus

NCT OF DELHI

..... Respondent

Through: **Mr. Amit Sahni, APP for the State
with Insp. Kuldeep Singh, PS Sarai
Rohilla.**

+ **CRL.M.C. 6500/2022 & CRL.M.A. 25308/2022**

SOUBHAGYA@RAHUL

..... Petitioner

Through: **Mr. Hemant Shah, Advocate.**

versus

STATE NCT OF DELHI

..... Respondent

Through: **Mr. Amit Sahni, APP for the State
with Insp. Kuldeep Singh, PS Sarai
Rohilla.**

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Date of Decision: 29th March, 2023

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

J U D G M E N T

DINESH KUMAR SHARMA, J. (Oral)

1. BAIL APPLN. 614/2023 is the bail application seeking regular bail of the petitioner in case FIR No.0149/2017 under Sections 393/398/302/34 of IPC

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Act and Section 27 of the Arms Act, 1959 registered at Police Station Sarai Rohilla. CRL.M.C. 6500/2022 has been filed challenging the order dated 26.11.2019 of the learned ASJ-02 Central, Tis Hazari Courts, New Delhi whereby the learned ASJ has rejected the plea of juvenility raised by the petitioner.

2. Learned counsel for the petitioner submits that pursuant to the directions of this Court, the Investigating Officer has filed the status report, whereby, the Principal of the North Delhi Municipal Corporation Primary School, Aruna Nagar-II, Chandani Chowk, Delhi has duly certified the petitioner's date of birth as 25.06.1999. It has also been submitted that even as per the admit card issued by the Central Board of Secondary Education for the Standard IX Examination conducted in the year 2012-2013, it records the petitioner's date of birth as 25.06.1999. Learned counsel for the petitioner submits that the Juvenile Board, concerned learned MM and the learned ASJ have not taken into account the school records and merely proceeded on the ossification test, which is in contravention of Section 94 of the Juvenile Justice Act.

3. There is a force in the contention of the learned counsel for the petitioner. The plea of juvenility is a very sensitive issue and no Court has been permitted to take a causal and cavalier approach in determining the minority. The age has to be determined strictly in terms of the judgment of the Supreme Court in *Narayan Chetanram Chaudhary vs. The State of Maharashtra* in Crl. Misc. Pet. No. 157334/2018 in Review Petition



(Criminal) Nos. 1139 -1140 of 2000 in Crl. Appeal Nos.25-26 of 2000 which reads as under:

“41. Under the 2015 Act the date of birth certificate ought to be the main factor for determination of juvenility. In the case of **Rishipal Singh Solanki** (supra), the two Judge Bench of this Court has laid down the principle that an inquiry initiated under Section 9 (2) of 2015 Act would be similar to that contained in Section 94 of thereof. We accept this view. We have called for the source of the date of birth certificate, which recorded the applicant's birth date at the time of his entry into the school which was in the year 1986. So far as the inconsistent dates of birth mentioned in the other documents, none of them is specified to be taken into consideration for undertaking the process of age determination as laid down in Section 94 (2) of the said statute. Once the applicant has discharged his onus, in support of his claim of juvenility by producing the date of birth certificate from the school, the State had to come up with any compelling contradictory evidence to show that the recordal of his date of birth in the admission register was false. The State, in this case, has not come up with any such compelling evidence which would render such certificate to be unreliable or false. The State and the complainant have sought to disprove the applicant's case on the basis of materials disclosed by him only, apart from the electoral roll. Here, we cannot indulge in any guesswork to doubt the entry in the school register. No evidence has been led to contradict the basis of the age of the applicant reflected in the aforesaid document. The certificate of date of birth as evidence of age having been provided in the statute itself, we shall go by that. “The other factor which has crossed our mind is as to whether a boy of 12 years could commit such a gruesome crime. But though this factor shocks us, we cannot apply speculation of this nature to cloud our adjudication process. We possess no knowledge of child psychology or criminology to take into account this factor while examining the report of the Inquiring Judge. Moreover, the age of the applicant revealed in the ossification test keeps the age of the applicant as claimed by him,



within the range specified in the report. The said test was conducted in the year 2005, and his age was determined in the range of 22 to 40 years. If we take 22 years as his age in 2005, then his year of birth would have been 1983. That would broadly correspond to the date of birth contained in the admission register.”

4. I consider that in view of the status report filed by the State showing the date of birth of the petitioner as 25.06.1999, the juvenility of the petitioner is required to be determined again by the learned Trial Court. Hence, the order of the Juvenile Board, learned MM dated 04.09.2019 and the order dated 26.11.2019 of the learned ASJ-02 Central, Tis Hazari Courts are liable to be set aside. The concerned learned Sessions is directed to get the age determination inquiry as expeditiously as possible and preferably within 8 weeks in accordance with the provisions of The Juvenile Justice (Care and Protection of Children) Act, 2015. Learned Trial Court may also get the issue examined in light of Section 15 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

5. Since the issue as to the age has been raised and on the basis of the school leaving certificate, the petitioner seems to be juvenile as on the date of the offence. The petitioner is admitted to interim bail till 10.05.2023 on furnishing a personal bond in the sum of Rs. 25,000/- with one surety of the like amount to the satisfaction of the learned Trial Court subject to the following condition:

- (i) that the petitioner will mark his appearance before the Investigating Officer on every Tuesday and Saturday at 11:30



AM in the concerned Police Station. The petitioner may be accompanied by his parents or any fit person of the family.

6. This Court hopes that the learned Sessions Judge shall complete the age determination inquiry on or before 10.05.2023 and thereafter the issue of bail shall accordingly be decided in accordance with law.

7. Learned counsel for the petitioner shall be at liberty to move an appropriate application before the learned Trial Court in terms of order on the juvenility.

8. With these observations, the present petitions along with the pending applications stand disposed of. However, nothing expressed herein shall tantamount to be an expression on the merits of the case.

9. Copy of the order be given *Dasti* under the signatures of the Court Master.

DINESH KUMAR SHARMA, J

MARCH 29, 2023
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